
In The Matter Of

ROBERT O. KLOCK, CASE NO. 95-ERA-20

COMPLAINANT, DATE: May 30, 1996

v.

TENNESSEE VALLEY AUTHORITY AND

UNITED ENERGY SERVICES CORP.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provisions of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851 (1988). The parties have requested dismissal of the complaint with prejudice and submitted a Memorandum of Understanding and Agreement and a Joint Motion for Dismissal in support of their request. Pursuant to the Secretary's Order of May 1, 1996, Complainant's counsel submitted documentation regarding distribution of the settlement funds.

Since the request for approval of the settlement is based on an agreement entered into by the parties, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* ¶ 3. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement

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of the Complainant's allegations the Respondent violated the ERA.

Paragraph 7 provides that the Complainant and his attorney shall not disclose the terms of the agreement except to Complainant's family and tax advisors. Paragraph 6 provides that the agreement does not prohibit or restrict the Complainant from reporting or providing information to any Federal or state governmental agency.

Although the parties have designated the documents in this case as confidential commercial information, ¶ 8, the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[2] *See Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Order Disapproving Settlement and Remanding Case, Feb 7, 1994, slip op. at 2-3 and cases there cited.

We find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. Paragraph 3.

SO ORDERED.

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KARL J. SANDSTROM
Presiding Member

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JOYCE D. MILLER
Alternate Member

[ENDNOTES]

[1] On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute and these regulations to the newly created Administrative Review Board (ARB). 61 Fed. Reg. 19978 (May 3, 1996)(copy attached). The ARB reviewed this case's entire record in rendering this final order.

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

[2] Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. §

70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).